IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 403 of 2000.

Reserved on: 4.4.2007

Date of decision: 9.4.2007

Bhadur Singh Rana ... Petitioner

Versus

H.P. Agro Industries Corporation Ltd. & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Shrawan Dogra, Advocate.

For the respondents: Mr. Balram Sharma vice Mr. S.C. Sharma, Advocate for respondent No. 1.

None for other respondents.

Per V.K. Ahuja, J.:

Petitioner joined department of Agriculture as Junior Engineer on 1.10.1977 in the unrevised pay scale of Rs.200-450. He joined in the Agriculture Department Workshop at Bhangrotu and later on, administrative control was transferred to respondent No. 1 Corporation. The petitioner was promoted as per order dated 15.9.1979 as Work Supervisor in the pay scale of Rs.320-750. Petitioner's pay was refixed in the scale of Rs.700-1200 with effect from 1.1.1978 as per the office order dated 7.7.1981. Respondents No. 2 to 5 were appointed in the scale of Rs.700-1200 (unrevised as Rs.320-750) in the year 1979.

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

The posts of petitioner and respondents No.2 to 5 were upgraded as Service Managers in the pay scale of Rs.850-1700 and their scales were also revised subsequently for which there is no dispute. The dispute as per the petitioner is that since his pay scale was also revised with effect from 1.1.1978 as Rs.700-1200, therefore, he should have been given the benefit of his earlier service since he joined on 1.1.1978, while respondents No. 2 to 5 joined in the year 1979. Keeping in view his length of service, the petitioner was to be senior to respondents No. 2 to 5. All these facts are not disputed and the dispute is only in regard to the period from 1978 the petitioner and respondents No. 2 to 5 were recruited as Managers.

We have heard the learned counsel for the parties and have gone through the record.

The petitioner approached the Tribunal which held that the petitioner and respondents No. 2 to 5 cannot be said to be hailing from the same cadre though they have been equated for promotion and appointment on the same set of posts. It was also observed that two persons appointed in the same cadre against the same set of posts, the person appointed earlier has to be considered senior. The observation made by the learned Tribunal was that respondents No. 2 to 5 were appointed as Managers and not as Junior Engineer at higher scale. In para-5, the learned Tribunal has also observed that the petitioner was posted as Junior Engineer in the pay scale of Rs.200-450, whereas respondents No. 2 to 5 were appointed in the pay scale of Rs.320-750 in June, 1979. It appears that the Tribunal has not considered the question that the scale of the petitioner was revised with effect from 1.1.1978 as Rs.320-750. Once after the revision the petitioner and respondents No. 2 to 5 were in the same scale though they may be

holding different posts which were found eligible for posting as Managers, the person senior in service had to be considered senior in view of the length of service. The criteria of length of service admittedly can be applied only when both the parties were in the same scale and after revision both the parties were in the same scale and since the petitioner was appointed on 1.1.1978, while respondents No. 2 to 5 were appointed in June, 1979, it has to be held that the petitioner was senior to respondents No. 2 to 5. The learned Tribunal had failed to consider the question that the scale of the petitioner was also revised with effect from 1.1.1978 and he was in the same scale as respondents No. 2 to 5.

The net result of the above discussion is that the findings of the learned Tribunal dismissing the application filed by the petitioner are set aside. The seniority of the petitioner shall be refixed in comparison to respondents No. 2 to 5 from 1979, keeping in view the length of service of the petitioner. The petition is allowed accordingly. There is no order as to costs.

(V.K. Ahuja),
Judge

(Kuldip Singh),
Judge

April 9, 2007
(BSS)